



December 20, 1999

Mr. J. David Dodd, III  
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Attorneys & Counselors at Law  
1800 Lincoln Plaza  
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Dallas, Texas 75201

OR99-3680

Dear Mr. Dodd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130434.

The City of Richardson (the "city") received a request for a copy of all abuse or harassment complaints filed against Richardson police officers within the past five years. Although you do not raise any exceptions to disclosure, you argue that the release of the responsive complaint information is unfair to the city's police officers. We have considered your arguments and have reviewed the sample complaint file.<sup>1</sup>

Initially, you argue that by not affording Richardson police officers the protections of Chapter 143 of the Local Government Code, this office treats your officers differently from officers in civil service cities. You state that this disparate treatment is a violation of your officers' equal protection rights. We disagree. Under section 143.089 of the Local Government Code, police and fire departments in civil service cities are allowed to withhold certain personnel information from public disclosure. *See* Loc. Gov't Code § § 143.089(a), (g). The confidentiality provisions of section 143.089 are incorporated into the Public Information Act (the "act") through section 552.101 of the Government Code.<sup>2</sup> This office

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<sup>1</sup>We assume that the "sample" records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

has no choice but to respect the confidentiality provisions of section 143.089 as we would any other confidentiality statute, and issue rulings accordingly. We assume from your arguments that the citizens of Richardson have chosen not to implement the civil service system in their municipality. Hence, it is the people of Richardson, not the individuals of this office, who have chosen to treat their officers differently from those in civil service cities. Therefore, your remedy can only be found at the ballot box, not in an open records ruling issued by this office.

You also argue that the release of the requested information violates your officers' right to privacy. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public under section 552.102 when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The requested information pertains solely to the work behavior and job performance of the city's police officers, and as such cannot be deemed outside the realm of public interest. See Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 329 (1982) (reasons for employee's resignation are not ordinarily excepted by constitutional or common law privacy). Consequently, the city may not withhold its officers' complaint files in their entirety under common-law privacy.

You also assert that due to the nature of their jobs, police officers are often the subject of false and unwarranted complaints. You argue that by releasing these unfounded complaints, this office is violating these officers' constitutional rights. We note, that by enacting the Public Information Act, the legislature has clearly stated that the citizens of Texas are entitled, unless expressly provided by law, to *complete* information about the affairs of their government and the official acts of public officials and employees. See Govt Code § 552.001; see also Gov't Code § 552.022 (establishing certain classes of super public information). We also note that false light privacy is not an actionable tort in Texas. See *Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). Therefore, a governmental body may not withhold information from disclosure merely because its release might place

a person in a false light. *See* Open Records Decision No. 579 (1990). Moreover, by releasing all complaint files, members of the public can judge for themselves the veracity of the individual complainant, as well as the sufficiency of the police department's investigation. *See* Open Records Decision No. 484 (1987) (public's interest in knowing how police departments resolve complaints against police officer ordinarily outweighs officer's privacy interest). Therefore, after reviewing your arguments that the act's procedures violate the due process rights of the city's officers, we conclude that no such violation has occurred.

Before we address whether the submitted information is protected from public disclosure, we note, for your future reference, that the city has misconstrued the provisions of section 552.117 of the Government Code. Section 552.117(1) excepts from public disclosure the home address, home telephone number, social security number, and family member information of a current or former official or employee of a governmental body who has elected to have this information withheld under section 552.024 of the Government Code. On the other hand, peace officers are not required to elect to withhold their 552.117 information; their information is automatically protected from disclosure under section 552.117(2). Accordingly, Richardson's police officers are afforded the same 552.117 protections as their civil service counterparts. Should you have further questions regarding the scope of the act's exceptions, we encourage you to consult the Office of the Attorney General Website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or contact the Open Government Hotline at 1-877-OPENTEX (673-6839).

We now turn our attention to the submitted information. As previously noted, information is protected by common-law privacy if it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and there is no legitimate public interest in its disclosure. We have reviewed the submitted complaint file and have marked the information that is protected by section 552.101 in conjunction with common-law privacy.

We also note that some of the submitted information is confidential by law. Federal regulations prohibit the release of criminal history record information ("CHRI") maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, to the extent that the requested information contains CHRI obtained from DPS or another criminal justice agency, that information must not be released to the requestor.

Finally, we note that the submitted documents contain information that is excepted from

disclosure under section 552.130. Section 552.130, which governs the release and use of information obtained from motor vehicle records, provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Therefore, the city must withhold the submitted Texas drivers' license numbers, license plate numbers, and vehicle identification numbers pursuant to section 552.130. The remaining submitted information, however, must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

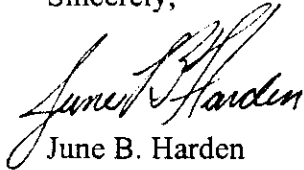
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/nc

Ref: ID# 130434

Encl. Marked documents

cc: Ms. Becky Oliver  
Reporter  
Fox 4 News  
400 North Griffin Street  
Dallas, Texas 75202  
(w/o enclosures)